

**IN THE DISTRICT COURT OF THE UNITED STATES  
FOR THE MIDDLE DISTRICT OF ALABAMA  
SOUTHERN DIVISION**

<b>MARY JONES and JOSEPH ALFORD,</b>	)	
	)	
<b>Plaintiffs,</b>	)	
	)	
<b>v.</b>	)	<b>CIVIL ACTION NO.: 1:06-cv-585-WHA</b>
	)	
<b>THOMAS FLATHMANN,</b>	)	
	)	
<b>Defendants.</b>	)	

**MOTION TO DISMISS OR IN THE ALTERNATIVE**  
**FOR SUMMARY JUDGMENT**

COMES NOW, Thomas Flathmann, in the above-styled cause, pursuant to Rule 12 of the Federal Rules of Civil Procedure and move this Honorable Court to dismiss this action for failure to state a claim upon which relief can be granted. In the alternative, said Defendant moves this Honorable Court for an Order under Rule 56, of the Federal Rules of Civil Procedure, dismissing Plaintiffs' claims against said Defendant and as grounds therefor assert that there is no genuine issue of material fact and that said Defendant is entitled to judgment as a matter of law. In support hereof said Defendant submits the following:

1. Plaintiffs' amended complaint as filed in this cause.
2. The Affidavit of Thomas Flathmann which is Exhibit A to this Motion and is filed simultaneously herewith.

3. The BRIEF OF THOMAS FLATHMANN IN SUPPORT OF HIS MOTION TO DISMISS OR IN THE ALTERNATIVE FOR SUMMARY JUDGMENT filed simultaneously herewith which is incorporated herein by reference as if fully set forth.
4. Thomas Flathmann, as a deputy sheriff at the time the alleged acts accured, is entitled to the protection of qualified immunity on all of the plaintiffs' constitutional claims
5. Thomas Flathmann is entitled to the protection of state law immunity given to deputies in their individual capacities.

WHEREFORE, Defendant Thomas Flathmann respectfully moves this Honorable Court for an order pursuant to either Rule 12 or Rule 56 of the Federal Rules of Civil Procedure, dismissing Plaintiffs' claims against said Defendant.

Respectfully submitted this the 21st day of December, 2007.

s/Gary C. Sherrer

Gary C. Sherrer

Bar Number: SHE016

Attorney for Defendant Thomas Flathmann

OF COUNSEL

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**CERTIFICATE OF SERVICE**

I, Gary C. Sherrer, hereby certify that on this 21st day of December, 2007, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Richard H. Ramsey, IV, Esq.  
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**s/Gary C. Sherrer**  
OF COUNSEL